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Supreme Court of the United States

OCTOBER TERM, 1943.

No. 281.

CIVIL.

WADE S. THOMSON, JOHN W. THOMSON, COURTNEY L. THOMSON, OLIVER C. THOMSON, MYRA M. JOHNSON, JULIA ELIZABETH THOMSON, BERTHA THOMSON, GUARDIAN FOR EUGENE THOMSON, HUSTON THOMSON, CALVIN C. THOMSON, MINORS, AND LILLIAN CRAWFORD, PETITIONERS,

VS.

LETA BUTLER, ROZELL GRIFFITH, LAURA THOMAS SHEPPARD AND COM. P. STORTS, EXECUTOR, RESPONDENTS.

PETITION FOR REHEARING

and

BRIEF IN SUPPORT THEREOF.

W. H. H. PIATT,
808 Temple Building,
Kansas City, Missouri,
Counsel for Petitioners.

ERNEST D. MARTIN,
1121 Gloyd Building,
Kansas City, Missouri,
Of Counsel.

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TABLE OF CASES

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PETITION FOR REHEARING.

To the Honorable the Chief Justice and Associated Justices of the Supreme Court of the United States:

Your Petitioners, in support of their Petition for Rehearing, on their Petition for Writ of Certiorari, to review

the final judgment of the United States Circuit Court of Appeals for the Eighth Circuit, affirming a decree and orders of the District Court for the Western Division of the Western District of Missouri, at Kansas City, respectfully show:

That the Petition for Writ of Certiorari was comprehensive and timely filed; that the original complaint set forth positive violations of the Constitution of the United States and contravention of the 14th Amendment, that it contained a statement of the facts, and prayed for protection and relief, believing your petitioners were justly entitled to the guarantees established by the forefathers.

That this court made no findings when it issued its order, and a denial of the Writ of Certiorari amounts to a refusal of any relief, as well as a decree of this court that it is unwilling to grant your petitioners a day in court, notwithstanding the fact that they never were served as required by law, that the judgment of the State court against them was procured by fraud, was null and void, and their property taken away from them without compensation, without due process of law, and in direct violation of the terms and provisions of the 14th Amendment to the Constitution of the United States.

Your petitioners further state that this court must have overlooked the above facts, and must have overlooked the Rule announced in *Mosher* v. *City of Phoenix*, 287 U. S. 29 (a corporate entity, empowered to plead and be impleaded same as an individual), wherein this court holds that when the complaint alleges property is attempted to be taken in violation of the 14th Amendment, then a Federal Question is presented, that the District Court erred in refusing jurisdiction, and that in such cases a Writ of Certiorari should issue.

That after your petitioners had properly appealed to this court for Constitutional protection, this court certainly could not have attempted to uphold that fallacious, fictitious and artificial interpretation or construction of the Constitution of the United States placed thereon by the lower court, wherein it held that there is a distinction between an action where the individual is deprived of his Constitutional guarantees, by the state, and an action where the individual is deprived of his Constitutional guarantees, by the State, at the instance of and by the machinations of individuals. This is a distinction without a difference. It is argument without either truth, reason or logic. It is the State acting in both instances. In both instances it is an action by the State. Six of one, and a half-dozen in the other. Such a construction and such a contention is in conflict with the Constitution itself, stifles and undermines that reputed bulwark of individual liberty, and conflicts with the intendment of prior decisions of this court.

That these are important questions and should be clearly and positively decided by this court, freed from different and conflicting constructions, by different courts, and its consequent uncertainty, as is now exemplified by the instant ruling in the 8th Circuit and the rule of the 3rd Circuit in *Publisher* v. *Shellcross,* 106 F. 2d 959, to the end that all may know the real law from artificial rules of construction and of invisible government, which alike conflict with the law of creation, the Divine Law and ultimate in intolerable government and failure.

Wherefore, your petitioners pray the court for a Rehearing; that later, it shall issue its Writ of Certiorari,

then review and reverse the decision of said Circuit Court of Appeals.

Wade S. Thomson
John W. Thomson,
Courtney L. Thomson,
Oliver C. Thomson,
Myra M. Johnson,
Julia Elizabeth Thomson,
Bertha Thomson,
Guardian for Eugene Thomson, Huston Thomson, Calvin C. Thomson, Minors, and
Lillian Crawford,
Petitioners,

By W. H. H. Piatt,
808 Temple Building,
Kansas City, Missouri,
Counsel for Petitioners.

Ernest D. Martin,
1121 Gloyd Building,
Kansas City, Missouri,
Of Counsel.

Certification.

Counsel for petitioners hereby certify that the above Petition for Rehearing is presented in good faith and not for delay.

W. H. H. Piatt,
808 Temple Building,
Kansas City, Missouri,
Counsel for Petitioners.

Ernest D. Martin,
1121 Gloyd Building,
Kansas City, Missouri,
Of Counsel.

BRIEF

IN SUPPORT OF PETITION FOR REHEARING.

SUMMARY OF THE ARGUMENT.

POINT I.

The Court erred because it failed to follow the Rule laid down in prior decisions of this Court.

POINT II.

The Court erred because it must have followed the fallacious and artificial interpretation, application and construction of the Constitution of the United States placed thereon by the court below, which construction is antagonistic to and undermines the Constitution itself, violates the rules of Equity, and is contrary to and conflicts with the intendment of prior decisions of this Court.

ARGUMENT.

POINT I.

This Court, in making its order denying the Writ herein, must have overlooked the rule announced by this Court in *Mosher* v. *Phoenix*, 287 U. S. 29-32, 77 L. Ed. 148, where the court said:

> Syl. 1. "Jurisdiction of the District Court upon the ground of a federal question, is determined by the allegations of the bill and not by the way the facts turn out or by decisions on the merits."
>
> Syl. 2. "Where a bill complaining of attempted appropriation of plaintiff's land by a City * * * without authority from State law, deprives plaintiff

thereof without compensation or condemnation proceedings, and without due process of law in violation of the 14th Amendment, a substantial federal question is presented."

Which opinion, after citing with approval, *Cuyahoga Power Co.* v. *Akron*, 240 U. S. 462, 60 L. Ed. 743, 36 S. Ct. 402; *Fidelity & D. Co.* v. *Tafoya*, 270 U. S. 426-434, 70 L. Ed. 664-667, 40 S. Ct. 331; *Iowa-Des Moines Nat. Bank* v. *Bennett*, 284 U. S. 239-246, 76 L. Ed. 265-272, 52 S. Ct. 133, does most emphatically assert:

> "We are of the opinion that the allegations of the bills of complaint that the City acting under color of State authority was violating the asserted private rights secured by the Federal Constitution, presented a substantial federal question; and that it was error for the District Court to refuse jurisdiction."

A City is not the State, but is a corporate and artificial entity, that may plead or be impleaded, the same as an individual and the city of Phoenix entered the litigation as such; and if the law under the Constitution can reach and embrace a City, it certainly can reach the individual, and in this instance, grant relief to petitioners herein.

In the past this court has said that all that is necessary to establish jurisdiction in a federal court, is to show that the complaint in good faith asserts the claim of a Federal Question.

City Ry. Co. v. *Citizens St. Ry.*, 166 U. S. 557, 41 L. Ed. 1114.

Cutting v. *K. C. Stock Yards Co.*, 183 U. S. 79, 46 L. Ed. 92-106.

Raymond v. *Chi. U. T. Co.*, 207 U. S. 36, 52 L. Ed. 87.

An attempt to construe the Constitution of the United States, by any court, naturally raises a federal question. Here, the court below attempted to construe the Constitu-

tion, and from which it necessarily follows that it raised a federal question, which this court should be in duty bound to review and pass upon the construction so placed upon the Constitution of the United States, before it allows such to be considered the future rule.

It has been held by this court, that when it becomes necessary to construe or apply the Constitution of the United States in order to reach a correct decision of the material issue, or to decide as to the existence of some right, title, privilege, claim or immunity asserted, or when plantiff relies upon them in whole or in part for a recovery, or when some right, privilege, immunity or title on which recovery depends will be defeated by one construction, or sustained by a contrary construction of the Constitution of the United States, then and there is presented a Federal Question, and the Supreme Court should hear it.

First Nat. Bank v. *Williams,* 252 U. S. 504, 64 L. Ed. 690-692.

Sowell v. *Fed. Reserve Bank,* 268 U. S. 449, 69 L. Ed. 1041.

Levering & G. Co. v. *Morrin,* 289 U. S. 103, 77 L. Ed. 1062.

Cook v. *Avery,* 147 U. S. 384, 37 L. Ed. 212.

Shreveport v. *Cole,* 129 U. S. 41, 41 L. Ed. 591.

L. Y. Gold Co. v. *Keyes,* 96 U. S. 199, 24 L. Ed. 656.

New Orleans v. *Benjamin,* 153 U. S. 411, 38 L. Ed. 764.

POINT II.

Is it possible that this court is also making an artificial distinction between an action where the individual is deprived of his Constitutional guarantees, by the State, at the instance of an individual as an agent, and an action where the individual is deprived of his Constitutional guarantees, by the State, at the instance of and by the machinations of individuals? There can be no honest difference. The individual *citizen is being deprived* in both

instances. It is the *deprivation,* which the Constitution is supposed to prevent, and if the machinery of the State is being used, it calls it, "The State." This construction of the lower court is a distinction without a difference. It is pure argument, without truth, reason or logic. The State is acting in both instances, and the machinery of the State is being used in both instances, and with like effect. The results are the same, as in both, the deprivation takes place and the citizen loses his guaranteed rights. What becomes of the guarantee of the Constitution, if such a subtle distinction can be drawn? The use of such a contention and construction (which conflicts with the Constitution itself) is the way to stifle and undermine that wonderful bulwark of individual liberty.

This court, in the following cases, was too intent upon preserving the Constitution of the United States, as written, to allow any fallacious or artificial ideas to enter into their opinions; but it did solemnly declare that Constitutional prohibitions had a real meaning, that the 14th Amendment had reference to every instrumentality of the State, and that the State could not clothe one of its agents with power to annul or evade the same, under any circumstances:

Ex Parte Virginia, 100 U. S. 339-346-347.
Virginia v. *Rives,* 100 U. S. 313-318-347.
Neal v. *Hopkins,* 118 U. S. 356.
Scott v. *McNeal,* 154 U. S. 34.
Gibson v. *Mississippi,* 162 U. S. 570.
Home Tel. Co. v. *Los Angeles,* 227 U. S. 278.

The purpose of the Constitution of the United States is to establish justice, it must and can only be effecting justice to the "man in the street," or he whose rights are being taken, when it is free from the application of artificial constructions or interpretations. It makes no difference to him whether his rights are being taken directly or indirectly through the machinery of the State. The crux of

the thing is the man's rights are being taken; it matters not about the machinery which destroys his rights.

The establishment of justice means, and can only mean that it is between man and man; without it, organized government cannot exist. Oppression or enslavement of man by man, is just as intolerable and obnoxious as oppression or enslavement of man by government.

This court did not attempt to split hairs or to make any such fine distinctions in *Marshall* v. *Holmes*, 141 U. S. 589, nor in *Gaines* v. *Fuentes*, 92 U. S. 10, nor in *Arrowsmith* v. *Gleason*, 129 U. S. 86, nor in *Simons* v. *Southern Ry.*, 236 U. S. 115, nor in any of the cases cited in our previous brief, at page 20, down to and including *Toucy* v. *N. Y. Life Ins. Co.*, 314 U. S. 118. They are all cases in which this court refused to follow or notice the fallacious and artificial contention or construction now being placed on the Constitution of the United States. But, on the contrary, in the above cases, this court vitalized and followed the rule of Equity to prevent the use of the law to effect injustice and to prevent artificial distinctions from depriving individuals of their guaranteed rights.

Equity.

This is an action in Equity. Not an action at law. Equitable principles should govern. The artificial distinctions between the State acting directly or indirectly by the machinations of individuals, does not apply in Equity. On the contrary, such distinctions ~~countervenes~~ contravenes and aborts Equity.

Finally.

The crucial question in the case at bar is, not diaphanous distinctions devoid of reality, but is the right to be heard. The right to present the facts. The complaint sets out the facts and fully pleads violations of the Constitution of the United States. If the facts do not support the complaint (here admitted), then the complaint fails, but if the

facts do support the complaint, then the complaint is sustained and justice prevails.

The Constitution of the United States panoplies your petitioners, the babies from Oklahoma, and their blood rights, as well as it does the respondents from Missouri, strangers to the blood; and in its construction, it should be free from fine spun theories interposed to prevent the privileges and immunities of petitioners from being protected from the ravages of the manufacturers of a bogus will.

The demand of the petitioners is for a hearing on the facts. Facts make the law. Law does not make facts. Jurisdiction roots in facts and not elsewhere.

Respectfully submitted,

W. H. H. PIATT,
Counsel for Petitioners.

ERNEST D. MARTIN,
Of Counsel.